

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEIGH BELL,

Plaintiff,

- against -

CVS PHARMACY, INC.

Defendant.

Docket No. 17-cv-6300

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Leigh Bell (“Bell” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant CVS Pharmacy, Inc., (“CVS” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of approximately thirty-six copyrighted portraits, owned and registered by Bell, a Mississippi based photographer. Accordingly, Bell seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or are transacting business in New York and is registered to do business in the State of New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Bell is a professional photographer in the business of licensing and selling her photographs for a fee, having a usual place of business at 577 Williams Road, Florence, Mississippi 39073.

6. Upon information and belief, CVS is a foreign business corporation duly organized and existing under the laws of the State of Rhode Island, with a place of business at 630 Lexington Avenue, New York, New York 10022. Upon information and belief, CVS is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, CVS has owned and operated store located at 4899 Lakeland Drive, Flowood, Mississippi 39232 (the “Store”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photographs

7. Bell photographed a couple and their child (the “Photographs”). True and correct copies of the Photographs are attached hereto as Exhibits A-1 and A-2.

8. Bell is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs are registered with the United States Copyright Office and were given registration number VA 2-058-797.

B. Defendant’s Infringing Activities

10. Upon information and belief, CVS created a memory book with the Photographs and put it on display in their store as a form of marketing to sell prints and to sell other memory

books and other merchandise. The memory book on display in the Store is attached hereto as Exhibits B-1 and B-2.

11. CVS did not license the Photographs from Plaintiff for its Store, nor did CVS have Plaintiff's permission or consent to publically display the Photographs in its Store.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST CVS)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. CVS infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs in the Store. CVS is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by CVS have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant CVS be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
August 20, 2017

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